

Document Description: Petition for Review by the Office of Petitions

MAY 19, 2010

PTO/SB/64 (07-09)

Approved for use through 07/31/2012, OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
P-305435

First named inventor: Morris Samelson

Application No.: 10/601,796

Art Unit: 1611

Filed: June 23, 2003

Examiner: Lakshmi S. Channavajjala

Title: Ultra fine dead sea mineral compound and method of manufacture

Attention: Office of Petitions  
**Mail Stop Petition**  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450  
 FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
 Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

**1. Petition Fee**

Small entity-fee \$ 810 (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.

Other than small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in  
 the form of Continuation 12/118,299 (identify type of reply):

has been filed previously on May 9, 2008  
 is enclosed herewith. | 05/20/2010 HMARZI1 00000006 100096 10601796

B. The issue fee and publication fee (if applicable) of \$ 01.50 410.00 DA  
 has been paid previously on \_\_\_\_\_  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## 3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

/Sean C. Crandall/

May 19, 2010

Signature

Date

Sean C. Crandall

57,776

Type or Printed name

Registration Number, If applicable

112 E. Pecan Ste. 2400

210-978-7714

Address

Telephone Number

San Antonio, TX 78205

Address

Enclosures:

- Fee Payment
- Reply
- Terminal Disclaimer Form
- Additional sheets containing statements establishing unintentional delay
- Other: \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at: \_\_\_\_\_

May 19, 2010

/Sean C. Crandall/

Date

Signature

Sean C. Crandall

Typed or printed name of person signing certificate

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## Privacy Act Statement

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The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attachment to Petition to Revive for Unintentional Abandonment

Applicants, by and through their attorney of record, attach the following statement to the Petition to Revive U.S. Patent Application 10/601,796, or in the alternative to grant a 3-month extension of time thereto and that the date of abandonment of the '796 application be extended to May 10, 2008.

STATEMENT

The purpose of this Petition to Revive U.S. Patent Application Serial Number 10/601,796 ("the '796 application") is to establish copendency with U.S. Patent Application Serial Number 12/118,299 ("the '299 application").

Applicants received a final rejection of the '796 application, attached as **Exhibit A**, on November 9, 2007. The final rejection stated, in part, "Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed," i.e., until May 9, 2010. The action also set a shortened statutory period to reply of three months, unless extension fees were paid. In or around December 2007, applicants' attorney of record had a telephone conference with the examiner to discuss the rejection, including possible amendments to the claims and possible submission of additional supporting documentation that might resolve some or all of the bases for the rejection. In particular, the examiner stated that a

study then being conducted by the applicants might be considered if the study was completed, and depending on its results, might possibly be sufficient to overcome at least some of the grounds for rejection of at least some of the claims.

On May 9, 2008, applicants filed the '299 application as a continuation of the '796 application, reasserting some of the old claims, as well as adding several new claims. Applicants intended the '299 application to be a full and adequate response to the final rejection and to preserve prosecution of the invention of the '796 application. Applicants also intended for the '299 application to be a valid continuation of the '796 application, as shown by the priority claim, attached hereto as **Exhibit B**. The '299 application was filed within the statutory six-month period of time to respond to the final rejection of the '796 application, and would have been sufficient to preserve priority if a petition for a three-month extension of time had been filed in the '796 application. However, applicants inadvertently failed to request the three-month extension of time and pay the appropriate fee. This caused the '796 application, which was prospectively pending on May 9, 2008, to instead be retroactively abandoned at the expiration of the three-month shortened period for reply, February 11, 2008 (Feb. 9, 2008 fell on a Saturday).

On or around May 23, 2008, the Patent Office issued an Official Filing Receipt for the '299 application, attached hereto as **Exhibit C**, which reflected the priority claim to the '796 application. This filing receipt gave Applicants no reason to suspect that there was a problem with the priority claim. On the contrary, Applicants relied on the Patent Office's Official Filing Receipt, including the priority claim, as indicating that the '299 application had been filed during the '796 application's pendency.

On or around May 23, 2008, the Patent Office issued a Notice of Abandonment in the '796 application, attached hereto as **Exhibit D**. The Notice of Abandonment was not sent until after the presumed date of abandonment, May 9, 2008. Importantly, the Notice of Abandonment did not state a date of abandonment. The applicants therefore believed that the '796 application had been abandoned effective May 10, 2008. Receipt of a Notice of Abandonment soon after May 10, 2008, with no date of abandonment listed, did not apprise of their error.

On or around January 4, 2010, applicants received an Office Action in the '299 application, attached as **Exhibit E**, which contained an election requirement. The Office Action did not reject the '299 application in light of Applicants' prior-issued U.S. Patent No. 6,607,151, to which the '796 application provided continuity. The Office Action did not mention any problem with the '299 application's priority claim. Applicants relied on the Office Action containing an election requirement and no objection to priority claim in their belief that the '299 application validly claimed priority to the '796 application. In response to the election requirement, Applicants filed an election of claims and canceled the non-elected claims.

On or around March 31, 2010, Applicants and their attorney first learned of a problem with the priority claim, upon receiving a first Office Action on the merits in the '299 application, which is attached hereto as **Exhibit F**. The first Office Action stated that the parent '796 application was abandoned on February 12, 2008 instead of on May 10, 2008, so that when the '299 application was filed on May 9, 2008, it was not copending with the '796 application. The March 31, 2010 Office Action on the merits was Applicants' first notice of Applicants' unintentional failure to request the three-month extension of time and to pay the appropriate fee in the '796 application, to keep the '796 application pending through May 9, 2007.

This Petition is a timely and prompt response to the March 31, 2010 Office Action's first indication to the Applicants that the '796 application went abandoned before May 9, 2007. Applicants' entire delay, from the failure to file the request for the extension of time with the appropriate fee before May 9, 2008 to the present filing of this grantable petition under 37 CFR 1.137, was unintentional. The administrative record in the '299 application referenced in this Petition provides objective evidence of same. Applicants' representatives' delay in discovering the abandoned status of the '796 application occurred despite the exercise of due care and diligence on the part of the Applicants' representative because, before March 31, 2010. A reasonable person reviewing the '299 application file wrapper would have mistakenly believed that the '299 application was an effective continuation application of the '796 application. The '299 application superficially appeared from all documents in the '299 file wrapper to have copendency with the '796 application. In fact, the USPTO PAIR website *still* shows the '299 application as having priority to the '796 application, as seen in **Exhibit G**.

This Petition is a sufficient specific statement and explanation by the prosecuting attorney concerning the circumstances surrounding the abandonment because: (1) the administrative record establishes specific facts which show that the failure to pay the three-month extension fee in the '796 application by May 9, 2008 was unintentional, and (2) because the prosecuting attorney concludes this Petition with a Declaration verifying the specific facts stated herein, which specific facts show that failure to pay the three-month extension fee in the '796 application by May 9, 2008 was unintentional.

The administrative record on its face establishes that Applicants' mistake was unintentional, innocent, and correctable. Applicants' filing of the '299 application on May 9, 2008, and

Applicants' claim of priority to the presumably copending '796 application; and Applicants' continued prosecution of the '299 application, all shown by the administrative record, are specific objective evidence of Applicants' intent to not abandon the '796 application before May 9, 2008.

The administrative record shows that Applicants' representative's mistaken belief that the copendency requirement for the '786 application was satisfied was a reasonable mistaken belief. The PTO specifically recognizes that receipt of an Official Filing Receipt giving an application the benefit of an earlier-filed application is a "positive documented act and official act" on which applicants may rely in concluding that applicants have satisfied the copendency requirements of Rule 60 (1059 OG 4, Compl. Ex. 21 (PTO Official Gazette) at col. 2, first paragraph).

**DECLARATION**

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that Such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

/Sean C. Crandall/  
Sean C. Crandall, Reg. No. 57,776

Date: May 18, 2010

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CONCLUSION

The instant Petition is a grantable petition and should be granted.

Applicants respectfully request that the '796 application be revived, or in the alternative that a three-month extension of time for the '796 application be granted and that the date of abandonment of the '796 application be extended to May 10, 2008, and that the '299 application be granted priority thereto.

Applicants request that the petition fee, along with any additional fees required, be charged to deposit account 10-0096 under attorney docket number P-305435.1 If there are any questions related to this Petition, Applicants respectfully request a telephone conference with the attorney of record.

Respectfully submitted,  
JACKSON WALKER, L.L.P.  
112 E. Pecan, Suite 2400  
San Antonio, TX 78205  
(210) 978-7714  
(210) 978-7790

/Sean C. Crandall/  
Sean C. Crandall,  
Reg. No. 57,776

Exhibit A: Final Rejection in '796  
Exhibit B: Priority Claim in '299  
Exhibit C: Filing Receipt for '299  
Exhibit D: Notice of Abandonment for '796  
Exhibit E: Election Requirement for '299  
Exhibit F: First Action on the Merits in '299  
Exhibit G: Continuity Data

## EXHIBIT A

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,796	06/23/2003	Morris Samelson	P-5435(div1)	7988
30544	7590	11/09/2007	EXAMINER	
JACKSON WALKER, L.L.P. 112 E. PECAN, SUITE 2400 SAN ANTONIO, TX 78205			CHANNAVAJJALA, LAKSHMI SARADA	
		ART UNIT		PAPER NUMBER
		1613		
			MAIL DATE	DELIVERY MODE
			11/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/601,798	SAMELSON ET AL.
	Examiner	Art Unit
	Lakshmi S. Channevallala	1815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS,  
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 October 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1835 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,11,16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,11,16 and 18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

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#### **DETAILED ACTION**

Receipt of amendment to claims and specification, remarks and declarations dated 8-23-07 is acknowledged. Receipt of supplemental amendment and remarks dated 10-29-07 is acknowledged.

Claims 3-10 and 12-15 have been canceled by the amendment of 10-29-07. Claims 1, 2, 11, 16 and 18 are pending.

#### ***Response to Arguments***

The declaration filed on 8-23-07 under 37 CFR 1.131 is sufficient to overcome the US 2003/0211062 (Laden) reference. Accordingly, the rejection of instant claims over the above reference has been withdrawn.

**However, in view of substantial amendments to the claims, the following new rejection has been applied:**

#### ***Claim Rejections - 35 USC § 112***

1. Claims 1, 2, 11, 16 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claims 1 and 18 recite the limitation "wherein said particles are adapted to be easily absorbed by the skin", which is not supported by the instant specification. Instant limitation calls for additional

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adaptation of the said particles, (and wherein said particles are adapted) besides being in an all-natural carrier medium and having a specific granularity. Instant specification did not describe any adaptation of the particles such that they are easily absorbed by the skin and hence constitutes new matter.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) OR KR in view of JP 2000344657 (JP).

Instant claim 1 has been amended to broaden the scope of the claim by deleting "consisting of" phrase and introducing "comprising phase", recite the specific granularity of the Dead Sea particles and the particles are adapted to be easily absorbed by the skin. Further, claim 18 has also been amended to include the new limitation that the particles are adapted to be easily absorbed by the skin.

KR teaches a cosmetic composition comprising large quantities of salt (15%-85%) such as bay salt, Dead Sea salt or bamboo salt, having a particle size of 0.1mm to 5.00 mm (page 3, 4<sup>th</sup> full paragraph), oil, surfactant and a polyol (page 3, 4<sup>th</sup> paragraph). KR teaches that the salts of the invention are employed to produce scrub effects and should be in the range of 0.01mm-5.0mm. KR also states that at the lower and higher salt concentrations; the scrub effects are not seen and also have an unpleasant touch.

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JP teaches a scrub cosmetic that shows improved adhesion to skin and usability without damage to skin, manifests excellent keratin- removing effect by formulating individually specific water-insoluble granules, carbonic diester, and a water-soluble polymer in a specific proportion. This scrub cosmetic comprises (A) 0.01-3 wt.% of a water-soluble polymer (preferably carboxyvinyl polymer, alkyl acrylate and methacrylate copolymer, methylcellulose and the like, (B) 0.1-70 wt.% of water-insoluble granules with an average particle size of 10-1,000  $\mu$ m (preferably polyethylene particles, pumice or bentonite) and (C) 0.1-30 wt.% of a carbonic diester represented by the formula (R1 and R2 are each a 6-28C hydrocarbon). This cosmetic can be used in the form of liquid, milk, cream, gel and the like by combination with other components or according to the mechanism of the vessels. Thus, the prior art recognizes that a particle size of below 1000 microns (less than 1mm) results in a cosmetic that has the excellent effects to remove the roughness and keratin from the skin surface and excellent quality a scrub cosmetic can be expected.

Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant to choose a particle of Dead Sea salts less than 1.0 mm in the cosmetic composition of KR and still expect to provide an effective skin scrubbing composition that is pleasant to touch and not irritating skin.

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2. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) OR KR in view of JP 2000344657 (JP) as applied to claims 1, 16 and 18 above, and further in view of in view of 5,997,889 to Durr et al ('889).

KR fails to teach the claimed oils of claims 2 and 11.

'889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of KR containing salts such as bay salts or Dead sea salts because '889 teaches the ingredients for moisturizing and providing relief to psoriatic or itchy skin conditions and KR also desires a skin composition that imparts moisturizing blood flow effect as well as function as a scrub. Therefore, a skilled artisan would have expected to achieve moisturization and also provide immediate relief from skin discomfort.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.00 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AU 1615  
November 6, 2007



LAKSHMI S. CHANNAVAJJALA  
PRIMARY EXAMINER

MAY 19 2010

Application/Control Number: 10/601,796  
Art Unit: 1615

Page 8

L3: Entry 5 of 6

File: JPAB

Dec 12, 2000

PUB-NO: JP02000344657A  
DOCUMENT-IDENTIFIER: JP 2000344657 A  
TITLE: SCRUB COSMETIC

PUBN-DATE: December 12, 2000

## INVENTOR- INFORMATION:

NAME COUNTRY

HIRAOKA, SHINGO

## ASSIGNEE- INFORMATION:

NAME COUNTRY

KOSE CORP

APPL-NO: JP11150657  
APPL-DATE: May 28, 1999

INT-CL (IPC): A61K 7/50

## ABSTRACT:

PROBLEM TO BE SOLVED: To obtain the subject scrub cosmetic that shows improved adhesion to skin and usability without damage to skin, manifests excellent keratin- removing effect by formulating individually specific water-insoluble granules, carbonic diester, and a water-soluble polymer in a specific proportion.

SOLUTION: This scrub cosmetic comprises (A) 0.01-3 wt.% of a water-soluble polymer (preferably carboxyvinyl polymer, alkyl acrylate and methacrylate copolymer, methylcellulose and the like, (B) 0.1-70 wt.% of water-insoluble granules with an average particle size of 10-1,000  $\mu$ m (preferably polyethylene particles, pumice or bentonite) and (C) 0.1-30 wt.% of a carbonic diester represented by the formula (R1 and R2 are each a 6-28C hydrocarbon). This cosmetic can be used in the form of liquid, milk, cream, gel and the like by combination with other components or according to the mechanism of the vessels. Thus, the resultant cosmetic has the excellent effects to remove the roughness and keratin from the skin surface and the excellent quality as a scrub cosmetic can be expected.

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## **EXHIBIT B**

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1

**BACKGROUND OF THE INVENTION**

2 This is a continuation of U.S. Patent Application Serial No. 10/601,796 and any  
3 amendments thereof, filed June 23, 2003 and published as U.S. Publication  
4 2004/0076600, which is a divisional application claiming priority to U.S. Patent  
5 Application Serial No. 09/931,453 filed August 16, 2001, all of which are hereby  
6 incorporated by reference.

7 **1. Field of The Invention**

8 Applicant's invention relates to an ultra fine mineral compound and a method of  
9 processing native Dead Sea minerals into this ultra fine mineral compound that can be  
10 used to manufacture all-natural Dead Sea mineral compositions particularly compositions  
11 for use in cosmetic preparations such as bath and body products.

12

13 **2. Background Information**

14 A cosmetic product is any substance or preparation intended for placing in contact  
15 with the various external parts of the human body or with the teeth or mucous membranes  
16 of the oral cavity with the intention of cleaning, perfuming, or protecting, to keep such  
17 parts in good condition, change their appearance or correct body odors. There are  
18 numerous product groups that fall within the category of cosmetic products or  
19 preparations, including but not limited to cosmetic emulsions, deodorants and  
20 antiperspirants, sunscreens, make-up preparations, hair preparations, bath products, soaps,  
21 exfoliating agents, and shaving preparations.

## EXHIBIT C

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## UNITED STATES PATENT AND TRADEMARK OFFICE

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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
12/118,299	05/09/2008	1615	540	305435.1(CON)	13	4

CONFIRMATION NO. 1751

30544  
JACKSON WALKER, L.L.P.  
112 E. PECAN, SUITE 2400  
SAN ANTONIO, TX 78205

## FILING RECEIPT



OC000000030060636

Date Mailed: 05/23/2008

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections.

## Applicant(s)

Morris Samelson, Residence Not Provided;

## Power of Attorney: None

## Domestic Priority data as claimed by applicant

This application is a CON of 10/601,796 06/23/2003 ABN  
which is a DIV of 09/931,453 08/16/2001 PAT 6,607,151

## Foreign Applications

## If Required, Foreign Filing License Granted: 05/20/2008

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US 12/118,299

Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

\*\* SMALL ENTITY \*\*

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**Title**

Ultra Fine Dead Sea Mineral and Method of Manufacture

**Preliminary Class**

424

**PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES**

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

**LICENSE FOR FOREIGN FILING UNDER****Title 35, United States Code, Section 184****Title 37, Code of Federal Regulations, 5.11 & 5.15****GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

## **EXHIBIT D**

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MAY 19 2010

<b>Notice of Abandonment</b>	Application No.	Applicant(s)
	10/601,796	SAMELSON ET AL.
	Examiner	Art Unit
	Lakshmi S. Channavajjala	1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 09 November 2008.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:

/Lakshmi S Channavajjala/  
Primary Examiner, Art Unit 1611

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## EXHIBIT E

4031/050  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/118,299	05/09/2008	Morris Samelson	P-305435.1(CON)	1751
30544	7590	01/04/2010	EXAMINER	
JACKSON WALKER, L.L.P. 112 E. PECAN, SUITE 2400 SAN ANTONIO, TX 78205			YEAGER, RAYMOND P	
		ART UNIT	PAPER NUMBER	
		1651		
		NOTIFICATION DATE	DELIVERY MODE	
		01/04/2010	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dmunsch@jw.com  
 cvelie@jw.com

MAY 19 2010

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	12/118,299	SAMELSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Raymond P. Yeager	1651	

*- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.13(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  
 If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  
 Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 09 May 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s)       is/are withdrawn from consideration.  
 5) Claim(s)       is/are allowed.  
 6) Claim(s)       is/are rejected.  
 7) Claim(s)       is/are objected to.  
 8) Claim(s) 1-13 are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No.      .  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date      

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date      .  
 5) Notice of Informal Patent Application  
 6) Other:

Application/Control Number: 12/118,299  
Art Unit: 1651

Page 2

### DETAILED ACTION

Claims 1 to 13 are pending.

#### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 to 4 and 12 to 13 are drawn to *Dead Sea minerals and/or a composition comprising Dead Sea minerals*, classified in class 424, subclass 69.
  - II. Claims 5 to 11 are drawn to a *method of treating a disease* classified in class 514, subclass 1.
2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the Dead Sea minerals and/or composition can be used *in vivo* for toxicology testing.
3. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the

Application/Control Number: 12/118,299

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Art Unit: 1651

above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

4. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after

Application/Control Number: 12/118,299

Page 4

Art Unit: 1651

the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

#### ***Election of Species***

5. The applicant must elect the following species:

- If applicant elects Group I, no species elections are required;
- If applicant elects Group II, the following species elections are required:
  - One specific *disease*;

The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, no election is required for group I and one specific *disease* for group II, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic for group I and claim 5 is generic for group II.

6. There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Application/Control Number: 12/118,299

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**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.**

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Application/Control Number: 12/118,299

Page 6

Art Unit: 1651

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond P. Yeager whose telephone number is (571)270-7681. The examiner can normally be reached on Mon - Fri 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

R.P.Y.

/Leon B Lankford/

Primary Examiner, Art Unit 1651

## EXHIBIT F



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
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 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/118,299	05/09/2008	Morris Samelson	P-305435.1(CON)	1751
30544	7590	03/31/2010	EXAMINER	
<b>JACKSON WALKER, L.L.P.</b> <b>112 E. PECAN, SUITE 2400</b> <b>SAN ANTONIO, TX 78205</b>				YEAGER, RAYMOND P
ART UNIT		PAPER NUMBER		
1651				
NOTIFICATION DATE		DELIVERY MODE		
03/31/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dmunsch@jw.com  
 cvelic@jw.com

MAY 19 2010

<b>Office Action Summary</b>	Application No.	Applicant(s)
	12/118,299	SAMELSON ET AL
	Examiner	Art Unit
	Raymond P. Yeager	1651

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 09 May 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-4 and 12-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some
  - \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
' Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

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#### **DETAILED ACTION**

Claims 1 to 4 and 12 to 13 are pending. Claims 5 to 11 have been cancelled.

#### ***Election/Restriction***

Applicant's election of group I, claims 1 to 4 and 12 to 13 in the reply filed on 02/17/2010 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### ***Priority***

This application is claiming the benefit of prior-filed nonprovisional application No. 10/601,796 under 35 U.S.C. 120, 121, or 365(c). Copending between the current application and the prior application is required. Since the applications are not copending, the benefit claim to the prior-filed nonprovisional application is improper. Applicant is required to delete the reference to the prior-filed application from the first sentence(s) of the specification, or the application data sheet, depending on where the reference was originally submitted, unless applicant can establish copending between the applications. The filing date for the instant application is 05/09/2008 and the date of abandonment for application 10/601,796 is 02/12/2008 and as such, the instant application was not copending with application 10/601,796. Further, since application number 10/601,796 makes claim as a divisional application of application number 09/931,453, the instant application is not considered to have priority to either of these earlier applications. Thus, instant claims 1 to 4 and 12 to 12 are considered to have a priority date of 05/09/2008.

#### ***Note – Specification***

The use of the trademarks has been noted within this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

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Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1 to 4 and 12 to 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,607,151 (Publication date: 08/19/2003), hereafter referred to as the Samelson patent.

The instant claims recite processed Dead Sea minerals with a particle size of less than 1.0 mm. The recitation of "*to be used as an ingredient for use in manufacturing cosmetic compositions for application to the skin*" is considered an intended use and is not afforded patentable weight and the recitation of "*provide a delivery vehicle for ionic compounds that can be absorbed as ions into skin cells*" is considered a property of the Dead Sea minerals. The claims recite a body scrub composition with (amounts approximate) 51 percent Dead Sea minerals, 25 percent palm oil, 9 percent soybean oil, 5 percent olive oil, 3 percent jojoba oil, 1 percent coconut oil, 1 percent essential oil blend (with 44 percent rosewood, 34 percent lavender, 20 percent chamomile, and 2 percent calendula in the essential oil), 1 percent jojoba wax PEG 120, 1 percent cashew husk oil ethoxylate, and 0.15 percent vitamin E.

The Samelson patent recites processed Dead Sea minerals with a particle size of less than 1.0 mm (claim 13) and a body scrub composition with (amounts approximate) 51 percent Dead Sea minerals, 25 percent palm oil, 9 percent soybean oil, 5 percent olive oil, 3 percent jojoba oil, 1 percent coconut oil, 1 percent essential oil blend (with 44

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percent rosewood, 34 percent lavender, 20 percent chamomile, and 2 percent calendula in the essential oil), 1 percent, jojoba wax PEG 120, 1 percent cashew husk oil ethoxylate, and 0.15 percent vitamin E (column 9, lines 4-26). The U.S. Patent Office is not equipped with analytical instruments to test prior art compositions for the infinite number of ways that a subsequent applicant may present previously unmeasured characteristics. In the instant application the claims recite that the Dead Sea mineral particles *"provide a delivery vehicle for ionic compounds that can be absorbed as ions into skin cells"* (limitations in instant claim 13). When as here, the prior art appears to contain the exact same ingredients (i.e. Dead Sea minerals) and applicant's own disclosure supports the suitability of the prior art composition as the inventive composition component, the burden is properly shifted to applicant to show otherwise. Regardless, the composition recited in the Samelson patent provides optimal delivery of ionic compound (column 5, lines 22-25) and will have a granularity of less than 1.0 mm (column 6, lines 33-44).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 USC 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (Publication date: 12/24/1994), hereafter referred to as the Lee publication.

The applicant claims processed Dead Sea minerals of ultra-fine uniform specific granularity with a particle size of less than 1.0 mm. The recitation of *"to be used as an ingredient for use in manufacturing cosmetic compositions for application to the skin"* is considered an intended use and is not afforded patentable weight.

The Lee publication teaches a Dead Sea salt used in scrubs wherein the salt has a particle size of 0.01 mm to 5 mm. Though silent regarding whether the distribution of

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particle size is heterogeneous or homogenous, it would be obvious to one of ordinary skill in the art to optimize to a homogenous particle size of less than 1 mm as the Lee publication provides a range which overlaps this instantly claimed range and thus it would be obvious to optimize to a particle size of less than 1 mm per MPEP 2144.05.II (limitations in instant claim 12). The U.S. Patent Office is not equipped with analytical instruments to test prior art compositions for the infinite number of ways that a subsequent applicant may present previously unmeasured characteristics. In the instant application the claims recite that the Dead Sea mineral particles "*provide a delivery vehicle for ionic compounds that can be absorbed as ions into skin cells*" (limitations in instant claim 13). When as here, the prior art appears to contain the exact same ingredients (i.e. Dead Sea minerals) and applicant's own disclosure supports the suitability of the prior art composition as the inventive composition component, the burden is properly shifted to applicant to show otherwise.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to optimize the particle size within the range in the Lee Publication as discussed above. One of ordinary skill in the art would have been motivated to do this because optimizing parameters in a given range is known to one of ordinary skill in the art. In light of the forgoing discussion, it would be obvious to one of ordinary skill in the art that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a). From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

- Claims 1 to 4 and 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (Publication date: 12/24/1994), hereafter referred to as the Lee publication as in claims 12 and 13 above and further in view of US Patent

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5,997,889 (Publication date: 12/07/1999), hereafter referred to as the Durr patent; US Patent 5,716,928 (Publication date: 02/10/1998), hereafter referred to as the Benet patent, Tolman and Munson, 1903 (*Journal of the American Chemical Society*, vol. 25(9):954-962); US Patent 6,716,441 (Publication date: 04/06/2004), hereafter referred to as the Osborne patent; US Patent 6,299,891 (Publication date: 10/09/2001), hereafter referred to as the Leverett patent; US Patent 6,280,746 (Publication date: 08/28/2001), hereafter referred to as the Arquette patent; GB 2262525 (Publication date: 12/18/1991), hereafter referred to as the Hart publication; US Patent 6,365,656 (Publication date: 04/02/2002), hereafter referred to as the Green patent.

The applicant claims processed Dead Sea minerals of ultra-fine uniform specific granularity with a particle size of less than 1.0 mm. The recitation of "*to be used as an ingredient for use in manufacturing cosmetic compositions for application to the skin*" is considered an intended use and is not afforded patentable weight and the recitation of "*provide a delivery vehicle for ionic compounds that can be absorbed as ions into skin cells*" is considered a property of the Dead Sea minerals. The claims recite a body scrub composition with (amounts approximate) 51 percent Dead Sea minerals, 25 percent palm oil, 9 percent soybean oil, 5 percent olive oil, 3 percent jojoba oil, 1 percent coconut oil, 1 percent essential oil blend (with 44 percent rosewood, 34 percent lavender, 20 percent chamomile, and 2 percent calendula in the essential oil), 1 percent, jojoba wax PEG 120, 1 percent cashew husk oil ethoxylate, and 0.15 percent vitamin E.

The Lee publication teaches a Dead Sea salt used in scrubs wherein the salt has a particle size of 0.01 mm to 5 mm and would be obvious to optimize to a particle size of less than 1 mm per MPEP 2144.05.II (limitations in instant claims 3, 4, 12, and 13). The Lee publication teaches optimizing the amount of salt between 15 to 85 percent in a composition with 5 to 50 percent oil, 1 to 10 percent surfactant, and 9 to 40 percent polyol (i.e. ethoxylates) in a body scrub (page 3, paragraph 5). The Lee publication does not expressly teach the specific species components recited. This deficiency in the Lee publication is cured by the teachings of the Durr patent, the Benet patent, Tolman and Munson, 1903, the Osborne patent, the Leverett patent, the Arquette

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patent, the Hart publication, and the Green patent. The Durr patent teaches a skin treatment composition comprising almond oil, cocoa butter, jojoba oil, vitamin E oil, beeswax, hydrogenated soybean flakes, vitamin A, shea butter, and essential oils (including chamomile, lavender, and rosewood). The Benet patent teaches rosewood, calendula, chamomile, and lavender are functional equivalent essential oils (claims 6 and 7). Tolman and Munson, 1903 teach that olive oil, almond oil, palm oil, jojoba oil, and coconut oil are functional equivalents and thus it would be obvious to use any of these oils in any combination (entire paper, particularly page 960). The Osborne patent teaches soybean oil is a functional equivalent to vegetable oils and hydrogenated vegetables oils such as coconut oil, palm oil, and jojoba oil for incorporation into an oily composition for skin treatment (abstract, and column 14, lines 52-63) and also teaches calendula is appropriate to add (column 15, line 65 to column 16, line 3). The Leverett patent teaches jojoba wax PEG 120 is an excellent plasticizer (i.e. dispersant or surfactant) in cosmetic compositions (column 1, line 66 to column 2, line 5) and the Arquette patent teaches jojoba esters or jojoba wax PEG 120 is an excellent carrier of fragrance oils (i.e. essential oils) (abstract, column 7, lines 13-44 and column 11, example 2). The Hart publication teaches a cashew nut shell oil ethoxylate which is appropriate for use in cleaning compositions as a emulsifier, detergent, or dispersant (abstract, and page 1, lines 1-25) and the Green publication teaches ethoxylates of cashew oil is appropriate for use in personal care compositions comprising soybean oil (abstract and column 6, lines 24-45). Per MPEP 2144.05.II, especially in view of the functional equivalents above, and the generic concentrations in the Lee publication, it would be obvious to optimize the concentrations for delivery of the Dead Sea salts, and to optimize the properties of the scrub composition.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to the provide a body scrub composition as taught by the Lee publication, using the beeswax, oils (and essential oils), and vitamin E as taught by the Durr publication, the Benet publication, Tolman and Munson, 1903, and the Osbom, and providing jojoba wax PEG 120 and cashew nut shell (i.e. husk) oil ethoxylate as taught by the Leverett patent, the Arquette patent, the Hart publication, and the Green

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publication. One of ordinary skill in the art would have been motivated to do this because the Lee publication provides for a body scrub but may apply to any cosmetics for body or facial massage or cleansing (page 4, paragraph 1), the Durr publication teaches a composition highly effective for skin treatment (column 1, lines 39-42), the Benet publication teaches essential oils can increase the bioavailability of a compound to the skin (column 20, lines 38-49), Tolman and Munson, 1903, the Osborne publication teaches an oily composition is effective for treatment via topical application (abstract), the Leverett patent teaches jojoba wax PEG 120 is an excellent plasticizer (i.e. dispersant) in cosmetic compositions (column 1, line 66 to Column 2, line 5), the Arquette patent teaches jojoba wax PEG 120 increases the range of applications for cosmetic compositions (abstract), the Hart publication teaches a cashew nut shell oil ethoxylate which is appropriate for use in cleaning compositions as a emulsifier, detergent, or dispersant (abstract, and page 1, lines 1-25) and the Green publication teaches ethoxylates of cashew oil is appropriate for use in personal care compositions comprising soybean oil (abstract and column 6, lines 24-45). In light of the forgoing discussion, it would be obvious to one of ordinary skill in the art that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a). From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

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***Conclusion***

No claims are allowed; all claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond P. Yeager whose telephone number is (571) 270-7681. The examiner can normally be reached on Mon - Thurs 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

R.P.Y.

/Leon B Lankford/  
Primary Examiner, Art Unit 1651

## EXHIBIT G

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10/601,795 Ultra fine dead sea mineral compound and method of manufacture														
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